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MEMORANDUM

To: CMAP Programming Coordinating Committee

Date: January 7, 2009

From: CMAP Staff

Re: Developments of Regional Importance (DRI) Process DRAFT

document: Stakeholder and Public Outreach Comments &

Next Steps

At your December 10, 2008 meeting, the committee saw a presentation from the Urban Land Institute (ULI) regarding CMAP's DRAFT process for reviewing DRIs. CMAP staff also summarized other public comments on the draft document that was out for stakeholder and public comment. At the committee's direction, staff has completed the following for your review at your January 14 meeting:

- A matrix of the received comments including a summary and response to many of the comments. (Attachment)
- A thematic comparison of the ULI proposal and the DRI Process document (included in this memo).
- The staff's general comments on ULI's proposal (included in this memo).
- The original DRI Process document that incorporates the comments, amendments and staff suggestions. (Attachment)

Please review these documents prior to the meeting. We propose the following steps in order for the committee to make a decision as to how they wish to proceed:

- 1. Staff briefly presents the highlights of this memo and responds to any questions from the committee members.
- 2. The committee discusses the merits of the two proposals and decides which direction they wish to pursue. Possible directions that the committee may wish to pursue include the following:

- A. Recommend the ULI proposal as is or with suggested changes.
- B. Recommend the DRI Process proposal as is or with suggested changes.
- C. Recommend that some features included in the ULI proposal are incorporated into the DRI Process proposal.
- 3. Direct staff on next steps.

Thematic Comparison of the ULI Proposal and the DRI Process Document

In distilling the public comments received, we observed the following thematic concerns:

- Predictability: Does the process permit affected parties to effectively plan time and resources needed to participate in a DRI review?
- Fairness: Does the process give equal treatment to equal circumstances?
- Effort: Does the process place an undue burden on CMAP or project sponsors in comparison to the value it brings to achieving regional objectives?
- Transparency: Does the process ensure that a DRI review leads to logical and understandable recommendations?
- Limits: Does the process interfere with the authority of other units of government or the rights of private individuals?

We are currently evaluating two alternate proposals for a DRI process.

- 1. The PCC (Programming Coordinating Committee) process was released for public comment after a protracted development process that included numerous discussions and a large volume of comment by CMAP partners and interested stakeholders.
- 2. The ULI (Urban Land Institute) process was developed by a Technical Advisory Panel composed of industry professionals. The ULI process was submitted in response to CMAP's call for public comment on the PCC process. The expressed purpose of the ULI proposal was to offer clearly defined criteria by which to designate potential DRIs for review.

Staff observes the following in pairing the proposals with the thematic concerns:

• Predictability:

The identification of DRIs under the PCC process is less predictable because projects are not pre-screened. CMAP would rely on existing staff, committee and partnership mechanisms to build and defend the case for a DRI review.

DRI Review under the PCC process is also less predictable. Using a tiered process, the CMAP Board may limit their review to simply requesting ongoing involvement to preparation of a full regional impact assessment.

The identification of DRIs under the ULI process is more predictable because projects are pre-screened. Only major transportation projects or land use developments with high traffic or waste/stormwater impacts are eligible for review.

DRI Review under the ULI process is also more predictable. CMAP's singular product from the review is an advisory report prepared by CMAP staff that is submitted to the appropriate local authority.

Fairness:

The PCC process offers greater discretion to CMAP in handling projects on a case-by-case basis. Each DRI is reviewed on its own merits with recommendations tailored to individual conditions. This, however, does not ensure that similar cases will be received similarly by CMAP. It suggests that a casebook of precedents be developed to guide and defend subsequent decisions.

The ULI process allows marginally different project to be subjected to radically different handling; e.g. traffic or water impacts falling just below the pre-determined threshold escape review, while impacts just above the thresholds are subjected to review. Identifying the criteria in advance, however, permits marginal projects to be rescaled to circumvent an undesired review.

Effort:

The PCC process can be accomplished within the existing arrangement of CMAP and its partners. A commitment to timely and active engagement in the DRI review by CMAP partners diminishes the need for additional administrative resources. As noted above, however, the level of effort is not predictable and requires flexibility in planning staff and resources.

Because the ULI process stands apart from CMAP's established work program, it requires additional administrative overhead and technical staffing to implement. By limiting the product to advising on pre-established criteria, however, staffing and resource needs are more predictable.

• Transparency:

The PCC process prescribes ongoing public disclosure of the specific merits of individual projects. A review proceeds from general criteria to specific project attributes and permits closure at several points. In Tiers 1 and 2, however, conclusions are primarily qualitative and occur during the Board's open deliberation. The reasoning behind the Board's decision may not be clear or defensible under subsequent scrutiny. The ULI process prescribes significant evaluation prior to public disclosure of a project's relationship to specific thresholds. It permits project sponsors to address pre-specified concerns in the context of presenting a project's merits, but may limit the allowable questions to be addressed in the staff's advisory report.

• Limits:

The PCC process advises on a project's consistency with regional planning policies; the range of legitimate concerns can be construed as encompassing any topic within CMAP' strategic vision. Because this potentially involves land use, transportation, housing, economic development and environmental management it may be perceived as undermining community planning objectives and local political autonomy.

The ULI process prescribes a regional review only in the case of projects that far surpass the supposition of localized impact. The thresholds are purposefully set at such a high level as to easily dismiss any argument against the "regional" effects of a proposal. While some regionally important projects will likely fall below any pre-determined threshold, CMAP's legitimacy in advising on projects with the largest impacts will be preserved in advance.

Staff Comments on the ULI Proposal

We would like to thank ULI for conducting a Technical Assistance Panel regarding CMAP's proposed Developments of Regional Importance process. Bringing an industry point of view to the discussion was valuable to provide objective criteria and thresholds for what constitutes a DRI. As is evident in the summary of comments we received, the lack of a DRI definition including criteria and thresholds was universally commented upon. ULI's report can be found here: http://tinyurl.com/a2g7xd.

The following are the staff's general comments on ULI's proposal for the Committee's considerations as they deliberate the merits of the two proposals:

Zoning Changes

Page 4. "The DRI process should be initiated in the zoning stage". "If the project is entitled under current zoning the project should not be considered a DRI". This means that if a project is already permitted locally "by right" then it cannot be construed as having regional importance.

Page 7-8. The procedural elements are heavily dependent on "catching" the development during local zoning deliberations. Zoning is intended to permit a variety of uses "by right". Assessment of a specific proposal's regional impact is not typically relevant to a zoning board's consideration of a proposed land use's consistency with the local comprehensive plan or compatibility with surrounding land use.

Criteria to Trigger a DRI Review

Page 5. "Condition A: The project triggers a major transportation project...not part of the current [regional plan]." The major transportation project would also trigger a regional plan update, making the DRI review redundant.

Page 5. "Condition B: 50,000 vehicle trips...net of transit or internal development trips". The report doesn't explain why 50,000 is regionally important; an ill-placed project

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generating 5000 vehicle trips will have a greater negative impact than a well-placed 50k project. Are the thresholds too high?

Page 5-6. If a development must meet both the B & C criteria that is outlined, this could lead to what may be considered as marginal favorable planning practices. For example in the proposal, a project could exceed the threshold for vehicle trips, but deploy best practices to make the effluent point discharge less than 5 million gallons per day and avoid 500 acres of impervious surface and it would not qualify as a DRI. With these considerations, the road network may still not be designed to handle this traffic or other possible impacts.

DRI Review

Page 7. As outlined in the flowchart for the review and the decision-making process, the CMAP Board would not have an opportunity to review or consider the DRI report once it is prepared before it is sent to the applicant. The Board's only decision point is whether it is considered a DRI, which is already established by "thresholds".

ACTION REQUESTED: Discuss the merits of the two proposals and provide the staff direction on next steps.